

**AMENDMENT
TO INTERCONNECTION AGREEMENT
BY AND BETWEEN
ILLINOIS BELL TELEPHONE COMPANY d/b/a SBC ILLINOIS
AND
VERTEX BROADBAND CORPORATION**

WHEREAS, Vertex Broadband Corporation ("**CLEC**") has requested to adopt individual interconnection, network element and/or service arrangements ("**MFN Provisions**") contained in the separate Interconnection Agreement between Illinois Bell Telephone Company d/b/a SBC Illinois¹ ("**SBC Illinois**") and AT&T ("**Underlying Carrier**") for the state of Illinois (the "**Separate Agreement**"), pursuant to Section 252(i) of the Act; and

WHEREAS, the Separate Agreement, including without limitation the MFN Provisions, has been noticed for change in law/intervening law as a result of one or more of the following government action(s): the D.C. Circuit's decision in *Verizon Communications, Inc. v. FCC*, Nos. 00-511, 00-555, 00-587, 00-590, 00-602, 2002 U.S. Lexis 3559 and in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("**USTA I**"), and the FCC's Triennial Review Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) (rel. August 21, 2003) ("**TRO**") collectively ("**Government Actions**"); and

WHEREAS, on March 2, 2004, following remand and appeal of the D.C. Circuit's decision in *USTA I*, the D.C. Circuit issued another decision, *USTA v. FCC*, Case No. 00-1012 (D.C. Cir. 2004) ("**USTA II**"), ruling that the FCC's TRO is unlawful in many respects and although the mandate for *USTA II* has not yet issued, the Parties acknowledge and agree that *USTA II* will constitute an intervening law/change in law event under the Separate Agreement, including without limitation the MFN Provisions and the Parties' Agreement; and

WHEREAS, the Parties acknowledge and agree that CLEC's adoption of the MFN Provisions is subject to the previous invocation of the intervening law/change in law provision(s) in the Separate Agreement as to the Verizon and USTA I decisions and the TRO (and any other prior change in law notice(s)), and as to any change in law/intervening law notices which are provided as to *USTA II*, and with respect to any future lawful and effective FCC rules and associated FCC and judicial orders (collectively "**Government Actions**"); and

WHEREAS, the Parties hereby agree that following the date upon which the Commission has approved or is deemed to have approved the conforming changes to the MFN Provisions which are negotiated or resolved via dispute resolution between the Underlying Carrier and SBC Illinois ("**Conforming Changes**") as a result of any Government Action(s), the Parties shall conform the MFN Provisions to this Agreement (separate and apart from any conforming changes which may be required to other provisions in the Parties' Interconnection Agreement) to reflect the Conforming Changes approved by the Commission for the Separate Agreement; and

THEREFORE, concurrent with CLEC's adoption of the MFN Provisions, CLEC and SBC Illinois (collectively "**the Parties**") hereby agree to amend the Parties' Agreement, which is comprised of the MFN Provisions and other provisions deemed negotiated by and between the Parties (e.g., the intercarrier compensation provisions), as follows:

- (1) The Parties hereby agree to modify the intervening law language in the Agreement to read as follows:

¹ Illinois Bell Telephone Company ("**Illinois Bell**"), an Illinois corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin. Illinois Bell offers telecommunications services and operates under the names "SBC Illinois" and "SBC Ameritech Illinois", pursuant to assumed name filings with the State of Illinois. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc

WHEREAS, in entering into this MFN Agreement, SBC Illinois does not waive, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice as to the Separate Agreement) relating to the following actions, which the Parties have not yet fully incorporated into this MFN Agreement or which may be the subject of further government review: the United States Supreme Court's opinion in *Verizon v. FCC*, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al ("USTA") v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in *USTA v. FCC*, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued In the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "**Government Actions**"). Notwithstanding anything to the contrary in this MFN Agreement (including any amendments to this MFN Agreement), SBC Illinois shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Notwithstanding anything to the contrary in this MFN Agreement and except to the extent that SBC Illinois has adopted the FCC ISP terminating compensation plan ("**FCC Plan**") in Illinois in which this MFN Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this MFN Agreement, these rights also include but are not limited to SBC Illinois right to exercise its option at any time to adopt on a date specified by SBC Illinois the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this MFN Agreement. It is SBC Illinois position that this MFN Agreement is subject to the change of law provisions permitted under the Federal Rules except to the extent otherwise expressly provided in the MFN Agreement and also is subject to any appeals involving the MFN Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("**Provisions**") of the MFN Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by the MFN Agreement, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("**Written Notice**"). In such event, it is SBC Illinois position and intent that the Parties immediately incorporate changes from the Separate Agreement, made as a result of any such action into this MFN Agreement. Where revised language is not immediately available, it is SBC Illinois position and intent that the Parties shall expend diligent efforts to incorporate the results of any such action into this MFN Agreement on an interim basis, but shall conform this MFN Agreement to the Separate Agreement, once such changes are filed with the appropriate state commission. With respect to any Written Notices hereunder, Any disputes between the Parties concerning the interpretations of the actions required or the provisions affected shall be handled under the Dispute Resolution Procedures set forth in this MFN Agreement.

(2) Subject to Paragraph 3 below, the Parties hereby agree that upon the date that the Commission has approved or is deemed to have approved the Conforming Changes to the MFN Provisions which are negotiated or resolved via dispute resolution between the Underlying Carrier and SBC Illinois ("**Conforming Changes**") as a result of any Government Action(s), such Conforming Changes shall automatically apply to this Agreement as of the date such Conforming Changes are deemed effective as to the Separate Agreement ("**Effective**" or "**Effective Date**"); provided, however, within sixty (60) days of the Effective Date of the Conforming Changes the Parties shall file a conforming amendment to this Agreement to formally incorporate the Conforming Changes approved by the Commission as to the MFN Provisions from the Separate Agreement into this Agreement (in addition to any other

conforming changes which may be required to other provisions in the Parties' Agreement as a result of any Government Action(s)); and

(3) Notwithstanding anything to the contrary in this Amendment and the Agreement, in the event that the Conforming Changes are not Effective upon the earlier of: (1) January 3, 2005; or (2) the date the MFN Provisions in the Separate Agreement or the Separate Agreement itself is terminated and/or superseded for whatever reason; or (3) the date that the MFN Provisions in this Agreement are, or this Agreement itself is, terminated and/or superseded for whatever reason; or (4) the date that is 9 months after the date upon which either Party provides notice of termination/renegotiation under this Agreement as to any of the provisions set forth in this Agreement including, without limitation, the MFN Provisions ("**Termination Date**"); then, upon such Termination Date, the MFN Provisions shall automatically terminate, without any further action on the part of either Party and following such Termination Date, neither Party shall have any further obligations as to the MFN Provisions (and the Agreement, as applicable), except with respect to any obligations that the Agreement provides survive its termination. On or before such Termination Date, CLEC, to the extent it has not negotiated successor provisions with SBC Illinois as provided for in the Agreement and consistent with the Act, then CLEC shall exercise its rights pursuant to Section 252(i) of the Act to adopt individual interconnection, service or network element arrangements contained in an Illinois approved and effective interconnection agreement for purposes of its successor interconnection agreement and/or to replace and supersede the MFN Provisions, as applicable.

(4) Nothing in the Separate Agreement, including without limitation the MFN Provisions, and this Agreement, including without limitation this Amendment, shall constitute a waiver by either Party of any positions it may have taken or will take in any regulatory or judicial proceedings or any subsequent negotiations between the Parties. In addition, this Amendment shall not constitute a concession or admission by either Party and shall not foreclose either Party from taking any position in the future in any forum addressing any of the provisions or matters set forth in the MFN Provisions of the Separate Agreement, this Agreement, including without limitation this Amendment.

(5) The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Illinois Commerce Commission. This Amendment shall be filed with and is subject to approval by the Illinois Commerce Commission and shall become effective ten (10) days following approval by such Commission.

(6) This Amendment shall not modify or extend the Effective Date or Term of the Agreement, but rather, shall be coterminous with such Agreement.

(7) In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: the United States Supreme Court's opinion in *Verizon v. FCC*, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al ("USTA") v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in *USTA v. FCC*, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("**ISP Compensation Order**"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued In the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "**Government Actions**"). Notwithstanding anything to the contrary in this Agreement (including

this and any other amendments to the Agreement), SBC Illinois shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC Illinois has adopted the FCC ISP terminating compensation plan ("**FCC Plan**") in an **SBC-13STATE** in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC Illinois's right to exercise its option at any time to adopt on a date specified by SBC Illinois the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("**Provisions**") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("**Written Notice**"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

(8) EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this _____ day of _____, 2004, by SBC Illinois, signing by and through its duly authorized representative, and Vertex Broadband Corporation, signing by and through its duly authorized representative.

Vertex Broadband Corporation**Illinois Bell Telephone Company d/b/a SBC Illinois by
SBC Telecommunications, Inc., its authorized agent**

By: _____

By: _____

Name: _____
(Print or Type)Name: _____
(Print or Type)Title: _____
(Print or Type)Title: *For/* President-Industry Markets

Date: _____

Date: _____

FACILITIES-BASED OCN # _____**ACNA** _____